

Agnieszka Daniluk

University of Białystok

ORCID 0000-0002-4342-6023

adaniluk@uwb.edu.pl

The need to constitutionalise the National Electoral Commission – selected issues

Keywords: election administration, election law, administrative law

Summary. The author analyzed the legitimacy of the constitutionalisation of the State Commission. The observation of the activities of the democratic state institutions made us reflect once again on the need or even justifiability of assigning the status of a constitutional body to the NEC. The conclusion of the considerations introduces the postulate to raise to the rank of constitutional State Electoral Commission, which is an organ of state control and protection of the law. The constitutional foundation is extremely important for the structure and composition of the electoral bodies. The analysis of the tasks of the NEC proves that the constitutionalization of this central electoral body, supervising the implementation of passive and active electoral law, and of a body independent of the executive, seems to be necessary in the light of its current competences.

O potrzebie konstytucjonalizacji Państwowej Komisji Wyborczej – wybrane zagadnienia

Słowa kluczowe: administracja wyborcza, prawo wyborcze, prawo administracyjne

Streszczenie. Autorka poddała analizie zasadność konstytucjonalizacji Państwowej Komisji. Obserwacja działalności demokratycznych instytucji państwa skłoniła do pochylenia się po raz kolejny nad potrzebą czy wręcz zasadnością nadania PKW rangi organu konstytucyjnego. Konkluzja rozważań wprowadza postulat podniesienia do rangi konstytucyjnej Państwowej Komisji Wyborczej, będącej organem kontroli państwowej i ochrony prawa. Umocowanie konstytucyjne jest niezmiernie istotne dla struktury i składu organów wyborczych. Analiza zadań PKW dowodzi, iż konstytucjonalizacja tego centralnego organu wyborczego, nadzorującego realizację biernego i czynnego prawa wyborczego oraz organu niezależnego od władzy wykonawczej, wydaje się być konieczne przez pryzmat jej aktualnych kompetencji.

Historical outline of the constitutionalization of the National Electoral Commission

In a democratic state under the rule of law, the stability of the applicable law is a relevant value, which becomes more meaningful when referred to constitutional provisions, preferably ones that offer continuity.

The problem of constitutionalisation of the National Electoral Commission was widely discussed during the work of the Constitutional Committee of the National Assembly¹. At a session held by the Constitutional Commission on the constitutionalisation of the NEC on 17 October 1995, the draft constitution regulating the legal position of the NEC was discussed².

Member of Parliament, R. Grodzicki, on the side of maintaining the provisions on the NEC in the draft Constitution, stated that the basic argument in favor was 'in fact, that it issues regulations. He also mentioned that this was also the only reason why the provisions on the National Broadcasting Council were included in the draft Constitution. Continuing the arguments for retaining the NEC in the draft Constitution, he stated that this body that acts a law-making institution, should have its place in the Constitution, due to the fact that it does not fall under government administration. Unfortunately, the proposed Article 196 omitted the most important legislative aspect of the National Electoral Commission from this point of view of constitutionalisation. As those in favor of keeping the NEC in the draft constitution noted, this body participates in the creation of regulations "which affect how a key civil right is exercised—*i.e.*, the right to elect representative organs or one-person state organs provided for in the Constitution or legislation". During the session held by the Constitutional Committee of the National Assembly, committee expert P. Winczorek spoke against the constitutionalisation of the NEC, arguing that the National Electoral Commission should not establish law but apply it. P. Winczorek also argued that he did not know of a constitution "that would make an institution such as the National Electoral Commission a constitutional institution"³. He expressed the conviction that: "It is an institution that primarily applies electoral law rather than creating it, organises elections, with a variety of duties not involving arbitration or supervision but organization". As for normative duties, P. Winczorek shared a view during the committee meeting

¹ The committee established by the constitutional act of 23 April 1992 on the procedure for the preparation and adoption of the Constitution of the Republic of Poland.

² *Constitutional Committee of the National Assembly* - Bulletin XXVI, Warsaw 1996, Wydawnictwo Sejmowe, pp. 71-72. In line with this project:

Article 1: The National Electoral Commission shall conduct elections and supervise the democratic holding of elections to the Sejm, Senate, elections for the President, local government authorities, conduct referendums and perform other activities specified in the acts of law.

Article 2: The National Electoral Commission shall consist of 9 judges elected by three of the Constitutional Tribunal, the Supreme Court, and the Supreme Administrative Court. Article 177 does not apply to the judges of the Constitutional Tribunal appointed to the National Electoral Commission.

Article 3: The chairman of the National Electoral Commission and his two deputies shall be elected by members of the Commission from among their members.

Article 4: The organisation and manner of operating the National Electoral Commission are specified by the act of law.

³ *Ibidem*.

those various internal regulations and recommendations issued by the NEC, although significantly affecting the general public to some extent, do not constitute universally binding standards. While the commission was working, a similar view was represented by S. Gebethner, a representative of the Council of Ministers. However, S. Gebethner focused on the fact that “the courts exercise control over the democratic holding of elections, and the role of the NEC is merely organizational”, while arguing that those who supported including electoral bodies in the Constitution were confusing the issue of applying the law with its interpretation of the law. At the same time, he emphasised that “every institution applying the law interprets it, and if an institution misapplies the law, it is possible to appeal against this decision to the Supreme Court”. S. Gebethner also proposed an innovative structure for electoral bodies, whose duties would fall within the scope of the constitutionalisation of the NEC. The proposal concerned the introduction of so-called electoral courts or quasi-judicial institutions. Ultimately, however, the representative of the Council of Ministers did not submit a proposal to amend Article 196 regarding the NEC.

The Secretary of the National Electoral Commission, Justice K. Czaplicki, took the position that after 1990 the election law “clearly aims at making the election bodies autonomous and independent in matters related to the election procedure until the end of voting”. As the secretary of the National Electoral Commission noted, this institution is in many cases a body of appeal against decisions of other lower-ranking electoral bodies, and NEC decisions are not often subject to appeal. Therefore, according to Justice K. Czaplicki: “It is not true that the NEC only organises elections and then holds them. This institution primarily supervises compliance with the law”. According to the NEC secretary, another argument in favor of the constitutionalisation of the central electoral institution was also the fact that this body “issues resolutions that are de facto general legal acts because they are addressed to an unlimited group of addressees”. However, Justice Czaplicki’s arguments did not persuade other members of the Commission. Senator P. Andrzejewski submitted a motion for the deletion of Article 196 regulating an electoral body—*i.e.*, the National Electoral Commission—stating that: “The general philosophy of the Constitution does not involve cluttering the basic law with material appropriate to individual ordinary laws”⁴. In the vote, the motion received 13 in favor, 12 against and 5 abstentions. Thus, the content of Article 196 was not included in the uniform draft of the Constitution of the Republic of Poland. Thus, the National Electoral Commission was unconstitutionalised by just one vote.

⁴ *Komisja Konstytucyjna Zgromadzenia Narodowego – Biuletyn XXVII*, Warszawa 1996, Wydawnictwo Sejmowe, p. 4.

Tasks of the National Electoral Commission

After many years, practical observation of the activities of democratic state institutions prompts us once again to focus on the need or even justifiability of assigning the status of a constitutional body to the NEC. Have the arguments used by the representatives of the doctrine of constitutional and administrative law turned out to be accurate in terms of the functional aspect of the NEC nowadays? In order to answer this question, it would seem relevant to define the duties of the NEC, which will, consequently, define the role played by this institution.

Under Article 157 § 1 of the Electoral Code, the NEC became the highest permanent electoral authority competent in matters of conducting elections and referenda. It follows from the statutorily defined position of the system that the NEC is a state, collegiate, permanent (non-adjudicated) and central institution. The only problem is the attempt to locate the NEC within the system of state authorities, as it breaks from the traditional division of power into legislative, executive, and judicial. It is not an institution of executive power, although it performs state duties aimed at implementing citizens' rights under the Constitution and runs general elections. Nor is it a judicial institution⁵. The NEC judges, the highest-ranking in terms of composition, should ensure professionalism of action as well as apoliticality. It is precisely this solution that raises particular doubts in the light of the constitutional principle of the separation of powers. Since the NEC is not a judicial body, but a permanent state institution competent for the preparation, organisation and holding of elections, it does not belong to the judiciary authority. However, do the judges there not violate the principle of the separation of powers?⁶

The State Electoral Commission is an autonomous, independent state body, endowed with budgetary autonomy, located outside the classical division of powers, but remaining in close cooperation with each of them. In the case of government administration, the independence of the NEC raises doubts in situations where the power to issue regulations in strict electoral matters is vested in the competent ministers. Consequently, the NEC's lack of constitutional power means no authority to issue generally applicable acts in the field of electoral law. This is undoubtedly a systemic flaw, as no other judicial body has the right to legislate in the field of electoral law. Despite a lack of formal competence to legislate universally, the NEC, adopts a number of guidelines that are addressed to an unlimited number of recipients. Examples include resolutions on the rules of district and precinct election commissions, templates of voting papers or the rules and procedure for

⁵ A. Sokala, *Administracja wyborcza w obowiązującym prawie polskim*, Toruń 2010, pp. 69-70.

⁶ F. Rymarz, *Udział sędziów w organach wyborczych*, [in:] F. Rymarz (ed.), *10 lat demokratycznego prawa wyborczego Rzeczypospolitej Polskiej (1990-2000)*, Warszawa 2000, p. 46.

submitting to the competent district election commissions the results and protocols of voting from districts established abroad and on Polish ships. These resolutions are addressed to all voters, election committees and members of election commissions, which makes them general and abstract standards. These standards are also included in the amending resolution of 17 February 2020 on the method of nominating candidates for members of electoral commissions, the application form and the rules for appointing territorial electoral commissions and precinct election commissions in elections to municipality councils, powiat councils and voivodeship assemblies, councils of the Capital City of Warsaw and district councils in the Capital City of Warsaw⁷, where, inter alia, the requirements for members of the territorial commission and the district electoral commission are specified.

The duties of the NEC have changed over the years, extended by successive regulations. Today, the NEC not only organises and runs elections for the Sejm, Senate, European Parliament, the office of the President of the Republic of Poland, local elections and nationwide referenda, but also supervises local elections and referenda, controls the financing of elections and referendum campaigns, controls the financing of political parties and performs other duties arising from various pieces of legislation. When analysing the set of normative acts defining the work of the NEC, these tasks can be divided into several groups: organisational, supervisory, auditory and legislative, as well as duties related to public trust⁸.

Organisational work mainly consists in preparing and holding nationwide elections and referenda, announcing the results of elections and referenda, the seats won in nationwide elections and the results of nationwide local elections, or submitting reports on elections or referenda to the Supreme Court, and expressing opinions on election protests. Duties in this field also include informing the President of the Republic of Poland, the Marshal of the Sejm, and the Marshal of the Senate about the implementation of the provisions of the legislation applied in the election and referendum process, together with proposals for possible changes.

The institution of NEC reports on the course of elections with conclusions on the validity of the elections is relevant to the implementation of the constitutional principles of a democratic state ruled by law and the legality of the action taken by public authorities. The NEC's opinion on this matter, submitted to the Supreme Court, together with opinions of adjudicating panels issued when examining election protests, is one of two or, in the absence of election protests, is the only prerequisite for declaring the validity of an election.

⁷ M.P. 2020, pos. 262.

⁸ Cf. A. Żukowski: „Zadania NEC są rozległe i dotyczą kompetencji nadzorczych, kreacyjnych, stanowiących, wykonawczych i regulacyjnych”, *idem*, *System wyborczy do Sejmu i Senatu RP*, Warszawa 2004, p. 36.

Since its inception, the NEC has also supervised compliance with electoral law through its subordinate committees, election commissioners and all other entities participating in elections during the preparation, organisation and holding of elections and referenda, as well as during the determination and announcement of their results. Information about any violations of the law committed by these bodies is obtained by the NEC in the course of examining claims about their operation, or their own findings, the findings of an NEC inspection and in the course of checking election protocols. Within the scope of its duties, the NEC repeals resolutions made by district electoral commissions that were adopted in violation of the law or inconsistent with its binding guidelines, while also referring the case to the competent commission for re-examination or with the case being adopted for substantive adjudication⁹. There is no right of appeal against adjudications issued by the NEC taken within the scope of its general jurisdiction to supervise compliance with electoral law, including adjudications revoking the verdicts of the election commissioner. The new Regulations of the National Electoral Commission of 21 March 2011, adopted for the purposes of the Electoral Code, indicate in § 18 the means by which the Commission supervises the observance of electoral law. Firstly, this means the jurisdiction to issue guidelines and explanations as well as information on legal provisions. Due to the fact that NEC does not have the right to issue acts of generally applicable law, the guidelines and explanations of the NEC can therefore be included in the provisions of domestic law referred to in the Constitution of the Republic of Poland¹⁰. Another statutory measure related to the supervision of compliance with electoral law is the possibility of repealing resolutions and other decisions taken by lower-level electoral bodies adopted in violation of the law or inconsistent with its guidelines and referring the case for reconsideration or adopting a different decision on the matter. Within the scope of its supervisory powers, the NEC examines claims about the operations of lower-level electoral bodies and inspects the operations of local self-government units involved in running elections. The NEC may request that electoral bodies subordinate to it provide information on the performance of their duties.

The NEC is entitled to make two types of supervisory adjudications: firstly, cassation that involves overruling the decision of an election body and referring the case to that body for reconsideration, and secondly, amendment to the ruling of the election body and adjudication by the NEC regarding merit (only in the event of a review of the ruling of the constituency electoral commission).

The NEC also has supervisory powers in the process of establishing election results. The NEC is obliged to verify these results after receiving from the district

⁹ Article 161 § 2 of the Electoral Law.

¹⁰ Article 93 of the Constitution of the Republic of Poland.

election commission the protocol determining the election results in a particular district and the election protocol of members of parliament and senators. In the event of irregularities in the election results, the NEC makes a supervisory decision to order the regional commission to re-establish these results.

NEC verdicts, issued as a result of examining an appeal of the election committee against the decision of the constituency electoral commission to refuse to register the constituency list due to formal faults in the application, is also supervisory in nature. The NEC's decision in this case is final and is not entitled to any legal recourse. Therefore, it is of key significance, as it directly determines the participation in elections of specific entities in electoral competition.

The NEC may also establish its own inspection and define its scope of duties for the duration of the elections. The function of inspector is usually entrusted to KBW employees of the district electoral commission. The persons included in the inspection are entitled to access the documentation of lower-level electoral bodies and regional commissions, as well as the documentation related to elections, kept by governmental or local government administration authorities and in their subordinate organisational units. After the elections, they submit an immediate report on their operations.

The legislator also grants the NEC supervisory powers in matters of maintaining and updating the electoral roll and drafting the list of those entitled to vote. The catalogue of supervisory measures includes verifying that the electoral roll has been maintained and updated correctly along with list of those entitled to vote and checking the compliance of the register and list with the data from the population register and civil status records. In addition, the NEC may *ex officio* apply to competent authorities to remove persons from the register or list who have been entered in violation of the law, as well as collect and publish (at least once a quarter) information about the number of voters included in the register and provide details about the number of voters entered in the registers as of the date of their preparation for a given election¹¹.

The consequences of exercising this supervision are contained in the provisions of the Electoral Code, which state that the National Electoral Commission shall submit to the Sejm proposals to change the boundaries of constituencies and the number of members of parliament elected therein, should such a necessity arise from changes in the main territorial division of the state or from a change in the number of inhabitants in a particular constituency or in the country as a whole.

The legislator does not enumerate an exhaustive list of supervisory measures, and by using the term “in particular” envisages the possibility of extending their statutory catalogue. However, the literature reveals accusations regarding the un-

¹¹ Article 165 § 1 of the Electoral Law.

lawful characterisation of those legal measures as supervisory measures. The essence of supervision is to enable, by legal means, interference in the activities of the supervised entity in order to repair or improve its functioning, and such operations entail specific legal consequences. On the other hand, the addressee of an intervention by the National Electoral Commission shall be, first and foremost, the competent municipal authority, which is not subject to it, and may therefore follow the recommendations of the NEC, but may also refuse to take or elect not to take any action. In such situations, the NEC has no authority that might sway any improper behavior of the authority. It may only request that the voivode take appropriate supervisory action against the local government body in accordance with the Act on Municipal Self-Government or file a complaint with the provincial administrative court against the inaction of the municipal body. Only when an irregularity in compiling list involves entering unauthorised persons or omitting them from the list of entitled persons, may they be considered a crime against elections and referenda under the Criminal Code¹².

Considering the catalogue of measures listed in the code, one may notice that they are more geared towards auditing, consisting only in the right of the NEC to examine the actual state of maintenance of the register and electoral lists and to determine whether they meet the statutory requirements, rather than supervisory powers.

The National Electoral Commission is not only an institutional guarantor of free elections and referenda, but also an authority that controls the financing of elections and of political parties. Other duties of an auditing nature include checking that electoral entities and other entities comply with the provisions on election and referendum campaigns and verifying support for civic legislative initiatives.

The task of verifying support for a citizens' legislative initiative is related to the constitutional right of a group of at least 100,000 citizens with active voting rights to submit a bill to the Marshal's desk (Article 118 (2) of the Constitution). If the Marshal of the Sejm has reasonable doubts as to whether the submission of the required number of signatures for a civic bill is correct, he is obliged to request that the NEC confirm if the required number of signatures has in fact been submitted. The NEC has 21 days to perform the checks required. The decision issued by the NEC in this matter, made in the form of a resolution, is binding. A confirmation that the required number of signatures has been submitted for a given bill obliges the Marshal of the Sejm to run a civic legislative initiative. If the number of signatures proves insufficient, the project may be rejected¹³.

¹² Article 248 of the Criminal Code.

¹³ Article 12 of the Act of 24 June 1999 on the Exercise of Legislative Initiative by Citizens (Journal of Laws no. 62, item 688).

From its very inception, the National Electoral Commission has participated in implementing the constitutional principle of open financing of political parties¹⁴. This principle is rarely formulated in basic laws, and tends to be included in laws on political parties. Its inclusion in Chapter I, entitled *Rzeczpospolita*, should be considered as its acknowledgement as one of the basic principles, and therefore the most important for the functioning of the state¹⁵. The constitutional principle of open financing of political parties arises from many minor principles, including transparency of sources of party financing and of a party's assets, definition of the rules of subsidising a party from the state budget in a generally applicable normative act, the accuracy of financial reports submitted by parties to the competent authorities or the supervision of finances by state authorities

The principle of transparency should therefore be treated as a tool enabling social control over the activities of individual entities and for assessing whether actions undertaken are aimed at achieving the intended goals and comply with the principles of a democratic state ruled by law¹⁶.

In Poland, the principle of transparency regarding the financing of political parties, founded in the Constitution, has been specified in ordinary legislation. Monitoring the financing of political parties is performed on the basis of the Act of 27 June 1997 on political parties. The regulation of financing election campaigns was introduced by the Act of 27 September 1990 on the election of the President of the Republic of Poland, according to which representatives of election committees are obliged to submit to the chairman of the NEC a financial report on the sources of funds collected by them and the costs incurred for conducting an election campaign. These reports have been made open and available to the public by the NEC, although they have not provided for any substantive control or sanctions for violating financial regulations. Successive amendments to this act, enactment, and amendment of other acts¹⁷ as well as adoption and amendment of the

¹⁴ F. Rymarz, *Jawność i kontrola finansowania kampanii wyborczej w wyborach prezydenckich i parlamentarnych w latach 2000 i 2001. (Na tle praktyki Państwowej Komisji Wyborczej)*, "Przegląd Sejmowy" 2002, no. 6(53); F. Rymarz, *Jawność i kontrola finansowania działalności statutowej partii (w praktyce Państwowej Komisji Wyborczej)*, "Przegląd Sejmowy" 2004, no. 3(62).

¹⁵ Article 11 (1). The Republic of Poland ensures the freedom to create and operate political parties. Political parties associate all citizens on a voluntary basis and on the basis of equality in order to influence the shaping of the state's policy through democratic methods. Article 2. The financing of political parties shall be public and transparent.

¹⁶ M. Bidziński, *Finansowanie kampanii wyborczych do samorządu*, [in:] M. Chmaj (ed.), *Finansowanie polityki w Polsce na tle europejskim*, Toruń 2008, p. 95.

¹⁷ This institution developed further as a result of the adoption of the Act of May 28, 1993 – Electoral Regulations to the Sejm of the Republic of Poland 22, which slightly developed the current direction of indicating sources of financing, the limiting of expenses and the transparency of proceedings. but only the amendment to the act on the election of the President of the Republic of Poland of 27 September 1990, made in 2000, introduced control over the correctness and reliability

act of 27 June 1997 on political parties (Journal of Laws of 2001, no. 79, item 857, as amended) created a model for the financial monitoring of political parties and election committees based on the NEC's examination of reports submitted annually by political parties, or by election committees following an election campaign. The imprecision of the provisions and numerous legal loopholes in this and other acts on political financing, enabling the circumvention of regulations and the fostering of corruption, emphasise the substantial role of the NEC in the system of party financing¹⁸. The pathologies of this system distort the decision-making mechanisms in the state administration and the disposition of public funds, and the conviction that corruption gains traction contributes to the delegitimisation of democracy.

The role to monitor the financing political parties granted to the NEC as the highest, independent electoral body eludes the essence of its activity, but at the same time makes the NEC an independent state body of control¹⁹. However, doubts remain as to whether the entity of control should be the NEC. M. Chmaj draws attention to Bulgarian or Hungarian solutions, where there are specialised institutions that monitor party finances²⁰. In Bulgaria, this is the Accounts Office, whose task is to audit the financial activities of parties and the management of their assets, while in Hungary the responsibility falls to the State Audit Office to examine the legality of the financial management of political parties. This is the constitutional auditing body of the parliament, overseeing the management of public finances²¹. In France, candidates' financial accounts are audited by the Constitutional Council in the case of presidential elections and the National Commission on Election Accounts and Party Financing in the case of other elections²². However, in many countries these are politically empowered bodies. In Germany, it is the responsibility of the parliamentary administration to verify annual reports (including a list of donators), comment on them and publish them in the parliamentary newspa-

ty of financial statements. Electoral ordinance to the Sejm of the Republic of Poland and the Senate of the Republic of Poland of 12 April 2001 introduced more detailed and restrictive rules for controlling the financing of election campaigns. The basic assumption of the amendments was the adoption of the principle that political parties are to obtain funds for their activities, and above all for expenses related to participation in elections, almost exclusively from the state budget.

¹⁸ Incl. a specification within the act of components of "party assets" and not their "sources of financing", no monitoring of the cost of election campaigns incurred by election committees, no authorisation to verify the data contained in the report. Cf. the report of the Batory Foundation and the Institute of Political Science on the monitoring of election finances and proposed changes, no closed catalogue of sources of party financing.

¹⁹ M. Ekiert, K. Lorentz, *Rola Państwowej Komisji Wyborczej w systemie kontroli finansowania partii politycznych i kampanii wyborczych*, Warszawa 2014, p. 256.

²⁰ M. Chmaj, *Finansowanie partii politycznych*, [in:] M. Chmaj (ed.), *Finansowanie polityki...*, pp. 195-197.

²¹ *Ibidem*.

²² A. Ławniczak, *Finansowanie partii politycznych*, Warszawa 2001, p. 59.

per²³. The report is submitted to the chairman of the federal parliament, who carries out a formal audit, while the content-related audit of the accounts is carried out by the statutory auditor. Similar regulations can be found in Italy, where financial statements are checked by the speakers of both houses of parliament, assisted by statutory auditors²⁴.

Against this background, the model implemented in Poland, whereby jurisdiction in this area has been entrusted to apolitical and fully independent electoral bodies, may appear to be an appropriate solution, taking into account the fact that the controlling body, apart from substantive preparation, should be completely impartial so that its decisions do not arouse even the slightest suspicion of bias.

The NEC audits not only the financing of political parties, but also election and referendum campaigns. With regard to checking compliance with the provisions of law concerning the conduct and financing of election campaigns, election laws oblige the representatives of financial election committees to submit an election report to the NEC²⁵. The report on the committee's revenues, expenses and financial liabilities, including bank loans obtained and the conditions for obtaining them, along with the statutory auditor's opinion and report, must be submitted within 3 months from the date of the election²⁶.

Therefore, the legislator places the NEC's auditing of election campaign financing beyond the controlled entity and limits it to merely verifying the election report prepared and submitted by said controlled entity together with the documentation attached thereof. The legal instruments used by NEC in the course of an audit are identical to those used while auditing annual financial statements. The NEC selects a statutory auditor from the list of the National Council of Statutory Auditors, who then presents an opinion and a report on the election report submitted by an election committee. In the event of doubts as to the correctness of the election report, the NEC calls on the election committee to remedy any faults in the report or to provide explanations within a specified period. It may also commission an expert appraisal or opinion on the matters covered by the report.

The National Electoral Commission, when examining the election report, may request necessary assistance from state authorities, although the principles behind

²³ K.H. Nassmacher, *Analiza porównawcza finansowania partii politycznych w ustabilizowanych demokracjach*, [in:] M. Walecki (ed.), *Kulisy finansowania polityki*, Warszawa 2002, p. 34.

²⁴ A. Ławniczak, *op. cit.*, p. 93.

²⁵ Failure by the attorney to comply with this obligation is punishable by a fine, restriction of liberty or imprisonment for up to 2 years, Article 87 g (1) of the law on the election of the president.

²⁶ In the case of elections to the European Parliament, within 4 months from the date of the elections.

such cooperation with other state institutions are described very generally in the statutes and do not ensure that the NEC shall receive the necessary assistance²⁷.

The NEC also performs duties related to public trust. One example is the maintenance of a Register of Interests²⁸ for persons occupying managerial state functions. The obligation to disclose interests applies to members of the Council of Ministers, secretaries and undersecretaries of state in ministries and the Chancellery of the Prime Minister, heads of central offices, voivodes, deputy voivodes, members of voivodeship boards, voivodeship treasurers, members of powiat boards, secretaries of powiats, powiat treasurers, village heads (mayors, presidents of cities), deputy mayors, secretaries of municipalities and treasurers of municipalities, or their spouses.

The Register of Interests should include the following: information on all remunerated positions and occupations performed both in public administration and private institutions as well as professional work performed on one's own account; instances of material support given in exchange for public activities performed by the notifier; donations received from domestic or foreign entities, if the value exceeds 50% of the minimum wage; domestic or foreign travel not related to public function whose cost was not covered by the applicant or spouse or their employing institutions or political parties, associations or foundations to which they belong; other benefits obtained of a value greater than those indicated above, not related to the positions held or activities performed or professional work referred to at the beginning of this calculation. Information on participation in foundations, commercial companies or cooperatives should also be reported in the Register of Interests, even if no cash benefits are collected on this account.

Within the duties related to public trust, the NEC should collect vetting declarations from candidates and incumbent persons holding the office of the President of the Republic of Poland, members of parliament, senators, and members of the European Parliament, and forward them to the Institute of National Remembrance, as appropriate. The informative role of the NEC in this respect, consisting in the dissemination of knowledge about electoral law, is equally relevant.

The NEC also plays a significant informative role related to the dissemination of knowledge about the provisions of electoral law, as well as collecting comments and conclusions on the implementation of electoral laws and the experiences of other countries for the development of democratic electoral institutions.

²⁷ Cf. A. Sokala, *Administracja wyborcza w obowiązującym prawie polskim*, Toruń 2010, pp. 63-121.

²⁸ Article 12 (8) of the Act of 21 August 1997 on the restriction of economic activity by persons performing public functions (Journal of Laws no. 106, item 679, as amended).

Conclusion

In the face of the above arguments of a legislative, supervisory, control or constitutional nature, the postulate to raise the National Electoral Commission to the rank of a constitutional one, as an institution of state control and protection of the law, seems justified. Constitutional empowerment for the structure and composition of electoral authorities is becoming a regularity in countries undertaking reforms of their electoral administration²⁹. In 2000, at the request of the United Nations, the International Foundation of Electoral Systems in Washington issued a report demonstrating that the constitutionalisation of electoral bodies limits the possibility of easily amending the electoral system by means of an act or decree of power. The constitutionalisation of the NEC as the central electoral body supervising the implementation of passive and active electoral law and independent of the executive authority would seem to be necessary in the light of its current duties and jurisdiction.

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²⁹ R. Lopez-Pintor, *Electoral Management Bodies as Institution of Governance*, p. 21.

